



Agenda Date: 2/2/00
Agenda Item: 7C

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center
Newark, NJ 07102

CABLE TELEVISION

IN THE MATTER OF TIME WARNER CABLE OF)
BERGEN COUNTY'S GLOBAL SETTLEMENT OF)
FCC FORMS 1200/1205, 1210 AND 1240 USING THE)
THE BENCHMARK APPROACH FOR THE)
APPROVAL OF BASIC SERVICE TIER CHARGES)
AND THE SUBSEQUENT MAXIMUM PERMITTED)
RATES AS WELL AS APPROVAL OF THE FILING)
OF BLENDED FCC FORMS 1205 PURSUANT TO A)
FCC SOCIAL CONTRACT REGARDING REGULATED)
EQUIPMENT AND INSTALLATION COSTS USING)
THE OPTIONAL EXPEDITED RATE PROCEDURES)

ORDER ADOPTING STIPULATIONS OF FINAL RATES

CR94060268 CR95050233
CR96090675 CR96100717
CR96120839 CR97100733
CR97120875 CR98090995
CR98111357 CR99100760

SERVICE LIST ATTACHED

BY THE BOARD:

This Order considers a stipulation on final rates entered into by Time Warner Cable of Bergen County ("Petitioner"), as well as Staff of the Board of Public Utilities ("Board") and the Division of the Ratepayer Advocate, regarding a settlement of all issues relating to Petitioners' Form 1200/1205 filing, its subsequent Form 1210 and five Form 1240 filings and a stipulation for the approval of four blended Forms 1205 that were filed with the Board pursuant to a FCC Social Contract regarding regulated equipment and installation costs.

By way of background, on August 17, 1994, the Board issued an order pursuant to the Federal Communications Commission's ("FCC") Form 393 process relating to the cable operations of Petitioner. In doing so, the Board approved basic service rates, exclusive of franchise fees, of \$9.18 per month for Vision Cable ("Vision"), the prior owner of the Bergen County system. However, during that time period, there were four outstanding subscriber CPST complaints regarding its à la carte tiers and one lodged by the OCTV to the FCC. It was the OCTV's complaint that was recognized by the FCC because only the franchising authority, at that time, was an acceptable complainant.

In 1993, Vision offered fifteen (15) BST channels, twenty-two (22) CPST 1 channels and four (4) CPST 2 channels. Just prior to regulation, it transferred two (2) channels from the BST and two (2) channels from the CPST 1 and formed the Superstation Package. Vision, also, took four (4) channels from CPST 2, added BET and formed the Preferred Service Package.

However, it should be noted that Vision still offered fifteen (15) channels on the BST as of September 1, 1993, the date of regulation.

On December 19, 1994, the FCC addressed the complaints regarding the à la carte issue and found in agreement with the OCTV that "Other than an attempt to evade rate regulation, there appears to be no sufficient justification for this restructuring". (FCC LOI 93-32, DA94-1554) The FCC ordered that Vision's Superstation and Preferred Service Packages were subject to regulation as of 9/1/93 and the channels composing them must be counted as rate-regulated channels for purposes of rate justification, as of that date. It further ordered that, effective 90 days from the release date (12/22/94), Vision must either offer these channels as part of the respective rate-regulated tiers from which they came or offer the channels collectively as a separate rate-regulated tier or tiers of CPS.

On February 1, 1995, Vision submitted a revised Part II of the Form 393 to the FCC to adjust the total number of regulated channels. In addition, it made the two former à la carte packages into CPST 3 and CPST 4.

On April 1, 1995, Petitioner purchased the Bergen County system from Vision.

On November 30, 1995, the FCC and Petitioner entered into a Social Contract ("Contract") which resolved 900 CPST rate complaints from September 1, 1993 through November 30, 1995 that were under the jurisdiction of the Commission. In addition, approximately \$4.7 million plus interest was refunded to the affected subscribers. In New Jersey, \$129, 719 was refunded to all CPST subscribers in the Bergen County System.

Also, under the Contract, Petitioner was allowed to establish a blended average regional rate for the equipment basket categories of hourly service charge, installations and leased equipment for all its systems nationally, on a geographic regional basis with the FCC having the authority to establish FCC Form 1205 rates subject to review and enforcement by the Board.

On January 2, 1996 (Docket No. CR96090675), December 9, 1996 (Docket No. CR96120639), December 8, 1997 (Docket No. CR97120675) and November 20, 1998 (Docket No. CR98111357), Petitioner filed blended FCC Forms 1205 as permitted under the FCC rules and regulations and pursuant to the Contract setting forth the regulated installation and equipment rate adjustments listed on Schedule A of the Stipulation dated August 2, 1999. The rates reflected on this schedule are within the industry norm. The effective dates were January 1, 1996, 1997, 1998 and 1999 respectively.

In addition, Petitioner has a refund liability with regard to its FCC Form 1200/1205 filing. The equipment rates were increased three months early on July 1, 1994. As a result of this settlement, the equipment refund is approximately \$185, 323, including interest through February 29, 2000 or \$3.11 per converter.

By entering into the Stipulation of Final Rates dated January 4, 2000, the parties concluded that Petitioner's Forms 1200/1205, 1210 and 1240 calculations filed June 17, 1994 through October 1, 1999 were accurate and in compliance with the FCC's benchmark rules and revised competitive differential.

The pertinent terms of Stipulation of Final Rates are as follows:

- a) Petitioner will pay approximately \$185,323 in total refunds, inclusive of interest through February 29, 2000, to resolve all outstanding issues in its Form 1200/1205 filing as a one-time credit of \$3.11 per converter. This credit amount will be adjusted accordingly to incorporate the additional FCC prescribed interest amount through the last month prior to payment of the refund if the refund is not paid by March, 2000. Also, said credit shall be a separate line item on the bill and identified as "BPU Refund". It shall be distributed among current subscribers who rent converters up to and including the first billing cycle occurring 30 days after issuance of a final Board Order adopting the stipulation.
- b) The Basic Service rate charged by Petitioner as of January 1, 2000 as set forth in Exhibit 1 is hereby deemed just and reasonable.

Subscribers were notified of the rate changes by way of newspaper announcements informing them of their opportunity to submit written comments to the Board for a period of thirty days commencing from July 1, 1999 to August 1, 1999 and from November 18, 1999 to December 18, 1999. During the comment period of November 18, 1999 and December 18, 1999, there were 12 written complaints regarding the overall bill increase effective January 1, 2000.

The Board has reviewed the two (2) Stipulations of Final Rates and FINDS that they are reasonable, in the public interest and in accordance with the law. Therefore, the Board HEREBY ADOPTS the Stipulations of Final Rates (attached hereto) as its own, incorporating by reference the terms and conditions therein as if fully set forth at length herein.

The Board's adoption herein of the Stipulations of Final Rates results in finalization of Petitioners' Forms 1200/1205, 1210, and 1240 basic service rates for the period from July 1, 1994 to December 31, 2000 and Petitioner's blended Forms 1205 equipment and installation rates for the period from January 1, 1996 to December 31, 1999 and includes the following docketed matters:

<u>FCC Form</u>	<u>Docket Number</u>
1200/1205	CR94060268
1210	CR95050233
1240/1205	CR96090675
1240	CR96100717
1205	CR96120839
1240	CR97100733
1205	CR97120875
1240	CR98090995
1205	CR98111357
1240	CR99100760

The Board HEREBY ORDERS that Petitioner shall issue refunds due its subscribers pursuant to the Stipulation of Final Rates executed January 4, 2000, within thirty (30) days of the Board's decision, and that Petitioner inform subscribers of the reason for the refunds. Said refunds

shall be denominated "BPU Refund". The Board FURTHER ORDERS that Petitioner, within ten days of effectuating the entire refund to its subscribers, certify in writing to the Office of Cable Television that the refunds have been completed.

DATED: February 2, 2000

BOARD OF PUBLIC UTILITIES
BY:

(signed)

HERBERT H. TATE
PRESIDENT

(signed)

CARMEN J. ARMENTI
COMMISSIONER

(signed)

FREDERICK F. BUTLER
COMMISSIONER

ATTEST:

(signed)

EDWARD BESLOW
ACTING SECRETARY

THE MATTER OF
TIME WARNER CABLE OF BERGEN COUNTY'S
GLOBAL SETTLEMENT OF THE FILINGS
OF FCC FORMS 1200/1205, 1210 AND 1240
USING THE BENCHMARK APPROACH FOR APPROVAL
OF BASIC SERVICE TIER CHARGES
AND THE SUBSEQUENT MAXIMUM PERMITTED RATES
AS WELL AS
APPROVAL OF THE FILING OF BLENDED FCC FORMS 1205
PURSUANT TO A FCC SOCIAL CONTRACT REGARDING
REGULATED EQUIPMENT AND INSTALLATION COSTS
USING THE OPTIONAL EXPEDITED RATE PROCEDURES

DOCKET NUMBERS

CR94060268, CR95050233, CR96090675, CR96100717, CR96120839,
CR97100733, CR97120875, CR98090995, CR98111357, CR99100760

Sherry J. Tucker
Director of Budget and Planning
Time Warner Cable-National Division
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IN THE MATTER OF TIME WARNER CABLE -)	<u>CABLE TELEVISION</u>
BERGEN COUNTY'S GLOBAL SETTLEMENT)	
OF THE FILINGS OF FCC FORMS 1200/1205,)	STATE OF NEW JERSEY
1210 AND 1240 USING THE BENCHMARK)	BOARD OF PUBLIC UTILITIES
APPROACH FOR APPROVAL OF BASIC)	
SERVICE TIER CHARGES AND THE)	BPU DOCKET NUMBERS:
SUBSEQUENT MAXIMUM PERMITTED)	CR94060268 CR95050233
RATES)	CR96090675 (1240 ONLY)
		CR96100717 CR97100733
		CR98090995 CR99100760

STIPULATION OF FINAL RATES

The undersigned parties, as a result of a review of the Federal Communications Commission ("FCC") Forms 1200/1205, 1210 and 1240 and timely filed public comments in these matters and other information provided by Time Warner-Bergen County ("Petitioner") hereby stipulate to the following findings of fact and conclusions of law for consideration by the Board of Public Utilities ("Board"); and

WHEREAS, the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), codified at 47 U.S.C. § 543 et seq., (the "Federal Act"), classified the delivery of cable television services into two separate rate regulated categories: (i) "basic service" (consisting minimally of "off-the-air" and public educational and governmental channels) and associated equipment and installation and (ii) cable programming services ("CPS") (consisting of other tiers of channels) and associated equipment; and

WHEREAS, under the Federal Act, basic service is regulated by the "franchising authority," and

WHEREAS, under the provisions of the New Jersey Cable Television Act ("New Jersey Act"), N.J.S.A. 48:5A-1 et seq., the franchising authority is the Board of Public Utilities; and

WHEREAS, the Federal Act required the FCC to issue regulations governing the standards to be used by franchising authorities in regulating basic service rates; and

WHEREAS, under FCC rules, 47 C.F.R. § 76.900 et seq., a cable operator's initial rates for regulated tiers of service are set in accordance with the requirements of FCC Form 1200, which form compute the maximum permitted rate ("MPR") for regulated tiers of service; and

WHEREAS, under the regulations adopted March 30, 1994, 47 C.F.R. § 76.900 et seq., a cable operator may adjust its rates annually for inflation by filing a Form 1210 and quarterly for changes in external costs and channel changes and by electing the annual rate adjustment system under the regulations adopted September 15, 1995 (47 C.F.R. § 76.922) by filing a Form 1240, and

WHEREAS, since June 17, 1994, Petitioner has submitted various rate justification filings set forth on FCC Forms 1200/1205, 1210 and 1240 (a list of which is attached hereto as Exhibit 1); and

WHEREAS, all disputed issues concerning Basic Service tier installation and equipment rate overcharges by Petitioner that have been raised by Board Staff which give rise to the refund liability set forth below; and

WHEREAS, Board Staff has reviewed the FCC Forms 1200/1205 rate filings and supporting materials submitted by Petitioner and, based upon this review, has concluded that the terms of the instant stipulation set forth below, including the refunds ordered herein, compensate subscribers for the past overcharges; and

WHEREAS, Board Staff and the Ratepayer Advocate have reviewed the FCC Forms 1210 and 1240 rate filings and supporting materials submitted by Petitioner and, based upon this review, have concluded that the Maximum Permitted Rates are just and reasonable; and

WHEREAS, the Staff, the Ratepayer Advocate and Petitioner seek to effectuate a final resolution of all outstanding Basic Service tier rate cases for the Time Warner-Bergen County rate district; and

NOW, THEREFORE, Staff, the Ratepayer Advocate, and Petitioner hereby STIPULATE AS FOLLOWS:

1. Petitioner will pay approximately \$185,000 in total refunds, inclusive of interest through February 29, 2000, to resolve all outstanding issues in its Form 1200/1205 filing as a one-time credit of \$3.11 per converter. This credit amount will be adjusted accordingly to incorporate the additional FCC prescribed interest amount through the last month prior to payment of the refund if the refund is not paid by March, 2000. Also, said credit shall be a separate line item on the bill and identified as "BPU Refund". It shall be distributed among all affected subscribers who rent converters up to and including the first billing cycle occurring no later than 30 days after issuance of a final Board Order adopting the stipulation.
2. The Basic Service rate being charged by Petitioner as of January 1, 2000 as set forth in Exhibit 1 is hereby deemed just and reasonable.
3. Petitioner notified its customers of the proposed rate changes via newspaper announcements and has informed them of their opportunity to submit written comments for a period of thirty (30) days.
4. This Stipulation of Settlement resolves all issues raised by the filings which are the subject of the within matter.
5. This Stipulation shall be subject to the approval of the Board.
6. The signatories agree that, except as expressly provided herein, this Stipulation has been made exclusively for the purpose of this proceeding and that the Stipulation contained herein, in total or by specific items, is in no way binding upon the parties in other proceedings before the Board or in other forums or jurisdictions, nor are the contents of this Stipulation, in total or by specific items,

by inference, inclusion, or deletion, in any way to be considered or used by another party as any indication of the position of any party hereto on any issue litigated or to be litigated in other proceedings.

This Stipulation contains terms, each of which is interdependent with the others and essential in its own right to the signing of this Stipulation. Each term is vital to the agreement as a whole, since the parties expressly and jointly state that they would not have signed the agreement had any term been modified in any way. Each party is entitled to certain procedures in the event that any modification is made to the terms of this Stipulation, with each party, in the event of such occurrence, having the right to be placed in the position it was in before the Stipulation was entered into. Therefore, if any modification is made to the terms of this Stipulation, it is essential that each party be given the option, before the implementation of any new rate resulting from this action, either to modify its own position to accept the proposed changes, or to resume the proceeding as if no agreement had been reached.

The parties believe these provisions are fair to all concerned and therefore, they are made an integral and essential element of this Stipulation. This being the case, all parties expressly agree to support the right of any other party to this Stipulation to enforce all terms and procedures detailed herein.

GLORIA J. FURLONG
OFFICE OF CABLE TELEVISION

DATED:

By: _____
Supervising Administrative Analyst

BLOSSOM A. PERETZ, DIRECTOR
DIVISION OF THE RATEPAYER ADVOCATE

DATED:

By: _____
Lawanda Gilbert
Assistant Deputy Ratepayer Advocate

TIME WARNER CABLE-BERGEN COUNTY

DATED:

By: _____
Sherry J. Tucker
Director, Budget and Planning

EXHIBIT 1

<u>Date Filed</u>	<u>FCC Form</u>	<u>Docket Number</u>	<u>MPR</u>
6/17/94	1200/1205	CR94060268	\$8.54
5/15/95	1210	CR95050233	\$8.72
1/2/96	1240	CR96090675	\$8.54
10/1/96	1240	CR96100717	\$9.19
10/1/97	1240	CR97100733	\$8.92
9/28/98	1240	CR98090995	\$8.71
10/1/99	1240	CR99100760	\$9.15

IN THE MATTER OF TIME WARNER CABLE -)	<u>CABLE TELEVISION</u>
BERGEN COUNTY.'S FILING OF FCC FORMS)	
1205 PURSUANT TO A FCC SOCIAL)	
CONTRACT REGARDING INSTALLATION)	
AND EQUIPMENT COSTS USING THE)	STATE OF NEW JERSEY
OPTIONAL EXPEDITED RATE PROCEDURES)	BOARD OF PUBLIC UTILITIES
	BPU DOCKET NUMBERS:
	CR96090675 (FORM 1205 ONLY)
	CR96120839
	CR97120875
	CR98111357

STIPULATION OF FINAL RATES

The undersigned parties, as a result of a review of the FCC Forms 1205 as well as the timely filed public comments in these matters hereby stipulate to the following findings of fact and conclusions of law for consideration by the Board of Public Utilities ("Board"); and

As part of the Optional Expedited Rate Procedures (Approved January 12, 1996, Docket No. CX95120636), Time Warner Cable - Bergen County, N. J. (Petitioner) agreed to waive the Company's litigation rights at the Office of Administrative Law ("OAL") in these proceedings. It should be noted that Petitioner's waiver was a knowing, voluntary and intelligent waiver of its litigation rights at the OAL and that the waiver did not constitute a circumvention the Federal Communications Commission ("FCC") rules nor did it affect the Company's right to appeal in that forum.

WHEREAS, the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), codified at 47 U.S.C. § 543 et seq., (the "Federal Act"), classified the delivery of cable television services into two separate rate regulated categories: (i) "basic service" (consisting primarily of "off-the-air" and public educational, governmental channels) and associated equipment and installation and (ii) cable programming services ("CPST") (consisting of other regulated tiers of channels) and associated equipment; and

WHEREAS, under the Federal Act, basic service is regulated by the "franchising authority," and CPST upon the filing of a complaint before the FCC with regard to CPST is regulated by the FCC; and

WHEREAS, under the provisions of the New Jersey Cable Television Act ("New Jersey Act"), N.J.S.A. 48:5A-1 et seq., the franchising authority is the Board of Public Utilities; and

WHEREAS, the Federal Act required the FCC to issue regulations governing the standards to be used by franchising authorities in regulating basic service rates; and

WHEREAS, under the regulations adopted March 30, 1994, 47 C.F.R. § 76.900 et seq., a cable operator may adjust its rates by electing the annual rate adjustment system under the regulations adopted September 15, 1995 (47 C.F.R. § 76.922) by filing a Form 1240 and a Form 1205; and

WHEREAS, the Petitioner and the FCC have entered into a Social Contract ("Contract"), dated November 30, 1995, pursuant to which the Board is authorized to enforce such equipment and installation rates as the FCC may approve; and

WHEREAS, on January 2, 1996, Petitioner filed a blended Form 1205, as permitted under the FCC rules and regulations and pursuant to the Contract, Docket Number CR96090675, with the Board, setting forth the regulated installation and equipment rate adjustments listed on the attached Schedule A. Cable Operators that elect the annual rate adjustment method must file for approval of these rates as required by 47 C.F.R. § 76.923. "Operators that elect annual rate adjustments may change their filings from year to year, but at least 12 months must pass before the operator can implement its next annual adjustment" (Thirteenth Order of Reconsideration); and

WHEREAS, on December 9, 1996, Petitioner filed a blended Form 1205, as permitted under the FCC rules and regulations and pursuant to the Contract, Docket Number CR96120839, with the Board, setting forth the regulated installation and equipment rate adjustments listed on the attached Schedule A.

WHEREAS, on December 8, 1997, Petitioner filed a blended Form 1205, as permitted under the FCC rules and regulations and pursuant to the Contract, Docket Number CR97120875, with the Board, setting forth the regulated installation and equipment rate adjustments listed on the attached Schedule A.

WHEREAS, on November 20, 1998, Petitioner filed a blended Form 1205, as permitted under the FCC rules and regulations and pursuant to the Contract, Docket Number CR98111357, with the Board, setting forth the regulated installation and equipment rate adjustments listed on the attached Schedule A.

WHEREAS, the Staff, the Ratepayer Advocate and the Company have engaged in discussions of this matter; and,

NOW, THEREFORE, Staff, the Ratepayer Advocate, and the Company hereby STIPULATE AS FOLLOWS:

1. The Company notified its customers of the proposed rate changes via a newspaper announcement and has informed them of their opportunity to submit written comments for a period of thirty (30) days.
2. The effective dates for the rate changes in equipment and installation costs under Docket Number CR96090675 was January 1, 1996, under Docket Number CR96120839 was January 1, 1997, under Docket Number CR97120875 was January 1, 1998 and under Docket Number CR98111357 was January 1, 1999.
3. The stipulated equipment and installation rates shall be subject to the enforcement by the Board and all revenues collected as a result of this adjustment shall be subject to refund, pursuant to the rules and regulations of the FCC as well as those of the Board, if the Board finds the rates to be in any way implemented improperly.

4. This Stipulation of Settlement resolves all issues raised by the filings which are the subject of the within matter.
5. The signatories agree that, except as expressly provided herein, this Stipulation has been made exclusively for the purpose of this proceeding and that the Stipulation contained herein, in total or by specific items, is in no way binding upon the parties in other proceedings before the Board or in other forums or jurisdictions, nor are the contents of this Stipulation, in total or by specific items, by inference, inclusion, or deletion, in any way to be considered or used by another party as any indication of the position of any party hereto on any issue litigated or to be litigated in other proceedings.

This Stipulation contains terms, each of which is interdependent with the others and essential in its own right to the signing of this Stipulation. Each term is vital to the agreement as a whole, since the parties expressly and jointly state that they would not have signed the agreement had any term been modified in any way. Each party is entitled to certain procedures in the event that any modification is made to the terms of this Stipulation, the signatory parties each must be given the right to be placed in the position it was in before the Stipulation was entered. Therefore, if any modification is made to the terms of this Stipulation, it is essential that each party be given the option, before the implementation of any new rate resulting from this action, either to modify its own position to accept the proposed changes, or to resume the proceeding as if no agreement had been reached.

The parties believe these provisions are fair to all concerned and therefore, they are made an integral and essential element of this Stipulation. This being the case, all parties expressly agree to support the right of any other party to this Stipulation to enforce all terms and procedures detailed herein.

**PATRICK J. LOMBARDY,
OFFICE OF CABLE TELEVISION**

DATED:

By: _____
Bureau Chief

**BLOSSOM A. PERETZ, DIRECTOR
DIVISION OF THE RATEPAYER
ADVOCATE**

DATED:

By: _____
Lawanda Gilbert
Deputy Ratepayer Advocate

**TIME WARNER CABLE OF BERGEN
COUNTY**

DATED

By: _____
Sherry J. Tucker
Director-Budget & Planning